

PETITION OF

Food & Water Watch
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FOR JUDICIAL REVIEW OF THE
DECISION OF THE

Maryland Department of Environment
1800 Washington Boulevard
Baltimore, Maryland 21230

IN THE CASE OF

NOTICE OF FINAL DETERMINATION
General Discharge Permit for Animal Feeding
Operations
State Discharge Permit: 09AF, NPDES Permit:
MDG01

Civil Action No. C-02-CV-14-000786

REPLY BRIEF FOR PETITIONERS
FOOD & WATER WATCH AND ASSATEAGUE COASTAL TRUST

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TABLE OF CONTENTS

	Page
INTRODUCTION	1
ARGUMENT	1
I. Petitioners have standing to seek judicial review of MDE’s permit decision	1
A. Petitioners Have Associational Standing	3
<i>a. Petitioners’ members have standing to sue on their own because they have alleged facts sufficient to establish an imminent, actual, and redressable injury caused by MDE’s decision to issue a permit that is not in conformance with the law</i>	3
<i>b. Plaintiffs’ members have suffered concrete, particularized, actual and imminent injuries-in-fact</i>	3
<i>c. Petitioners’ members’ injuries are traceable to Defendant MDE’s decision to issue a permit not in conformance with the CWA and are likely to be redressed by a favorable opinion of this Court</i>	7
<i>d. Petitioners seek to protect interests that are germane to their purposes, and Petitioners’ members need not participate in this lawsuit</i>	9
B. Petitioners Have Organizational Standing	10
II. The Permit’s monitoring requirements are not consistent with applicable law.	11
A. The Permit does not comply with the Clean Water Act because it fails to require effluent monitoring to assure compliance with permit limitations	11
<i>a. The Clean Water Act monitoring requirements apply to all NPDES permits, including CAFOs and requires that CWA-compliant permits include effluent monitoring to assure compliance with permit limits</i>	12
<i>b. MDE’s proffered monitoring substitutes do not “assure compliance” with the effluent limitations in the Permit and, therefore, do not satisfy the legal requirement</i>	15
CONCLUSION	19

INTRODUCTION

As Petitioners outlined in their Memorandum in Support of Petition for Judicial Review (“Petitioners’ Memo”), Respondent Maryland Department of the Environment’s (“MDE”) final determination to reissue the General Discharge Permit for Animal Feeding Operations, National Pollutant Discharge Elimination System (“NPDES”) Permit #MGD01, Maryland Discharge Permit #14AF (“Permit” or “GDP”), was inconsistent with federal requirements that CAFOs, like all other point sources, conduct regular visual and effluent monitoring to demonstrate permit compliance. These federal monitoring requirements are essential to the integrity of the NPDES permit system, and thus to the health and well-being of citizens living near and using Maryland’s waterways. Without pollution monitoring, citizens, including members of Petitioner groups Food & Water Watch (“FWW”) and Assateague Coastal Trust (“ACT”), lack critical information about water quality in the waterways they and their communities live near and depend on for aesthetic and recreational purposes. This failure impacts FWW and ACT as well as their individual members. Notwithstanding MDE’s Answer to Petitioner’s Memo (“Answer”), Petitioners have standing to sue in this Court for a reissuance of the Permit that complies with federal monitoring requirements. Petitioners respectfully request that the Court remand the Permit to MDE with instructions to revise the Permit in order to bring it into compliance with governing federal regulations.

ARGUMENT

I. Petitioners have standing to seek judicial review of MDE’s permit decision.

A final determination to issue or renew a water pollution permit “is subject to judicial review at the request of any person that . . . [m]eets the threshold [Article III] standing requirements under federal law; and . . . [p]articipated in a public participation process through

the submission of written or oral comments.” Md. Code Ann., Envir. § 1-601. Respondents do not dispute that Petitioners have engaged in the public participation process. Answer at 15. Rather, MDE argues that Petitioners’ Memo did not articulate facts in their Petition showing that Petitioners meet threshold standing requirements. Id. Md. Code Ann., Envir. § 1-601(c) does not provide a pleading standard. It only states that the action for judicial review be conducted in accordance with the Maryland Rules. It does not require that Petitioners demonstrate that they meet the threshold standing requirements in their petition.

Respondent raised the issue of standing in its Answer, and reply briefs in Maryland courts are meant to “[respond] to the points and issues raised in the [respondent’s] brief” regardless of whether these points were raised in the petitioner’s opening brief. Fed. Land Bank v. Esham, 43 Md. App. 446, 459 (1979). Moreover, both federal and Maryland case law have established that it is appropriate for Petitioners to introduce facts in support of standing in response to a motion to dismiss for lack of standing. Courts routinely provide Petitioners the opportunity to supplement the record to demonstrate standing, and it is only appropriate to dismiss “[i]f, *after this opportunity*, the plaintiff’s standing does not adequately appear from all materials of record” Alabama Legislative Black Caucus v. Alabama, 135 S. Ct. 1257, 1269 (2015) (emphasis in original) (citing Warth v. Seldin, 422 U.S. 490, 501-02 (1975)). See also Handley v. Ocean Downs, LLC, 151 Md. App. 615, 629 (2003) (allowing a petitioner to demonstrate standing by providing an affidavit in response to a motion to dismiss). Therefore, Petitioners may properly respond to MDE’s standing challenge in this reply brief and demonstrate herein that Petitioners meet all threshold standing for both associational and organizational requirements.

A. Petitioners Have Associational Standing

Environmental groups have standing in Maryland courts when they meet three criteria: their “members would otherwise have standing to sue in their own right, the interests at stake are germane to the organization's purpose, and neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.” Patuxent Riverkeeper v. Md Dep’t of the Env’t, 422 Md. 294, 299-300 (2011) (citing Friends of the Earth, Inc. v. Laidlaw Environmental Services, Inc., 528 U.S.167 (2000) (quoting Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992))). Petitioners satisfy each of these factors.

a. Petitioners’ members have standing to sue on their own because they have alleged facts sufficient to establish an imminent, actual, and redressable injury caused by MDE’s decision to issue a permit that is not in conformance with the law

Petitioners have members with standing to sue in their own right. To demonstrate standing, an association need only show that one of its members would have standing on their own. Defenders of Wildlife, 504 U.S. at 563. In order for a member to have standing, that member must demonstrate that she has: “(1) suffered an ‘injury in fact’ that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely as opposed to merely speculative that the injury will be redressed by a favorable decision.” Patuxent Riverkeeper, 422 Md. at 299-300.

b. Plaintiffs’ members have suffered concrete, particularized, actual and imminent injuries-in-fact.

MDE’s decision to issue an NPDES Permit that fails to conform to the requirements of the Clean Water Act (“CWA”) has caused petitioners’ members to suffer an “injury in fact – an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or

imminent, not conjectural or hypothetical.” Defenders of Wildlife, 504 U.S. at 560 (internal citations and quotation marks omitted).

“[E]nvironmental plaintiffs adequately allege injury in fact when they aver that they use [an] affected area and are persons ‘for whom the aesthetic and recreational values of the area will be lessened’ by the challenged activity.” Friends of the Earth, 528 U.S. at 183 (citing Sierra Club v. Morton, 405 U.S. 727, 735 (1972)). An adverse impact on an individual’s activities, such as fishing, camping, swimming, picnicking, walking, and wading into the water, have all been found to be adequate to confer standing on that individual. Id. at 181-82. MDE’s decision to issue the Permit without required monitoring practices results in ongoing harm to plaintiffs’ members’ use and enjoyment of waterways in the Chesapeake Bay watershed.

Maryland’s CAFO industry is a significant, ongoing source of pollution in the Chesapeake Bay watershed. EPA has estimated that CAFOs, which amass thousands of animals in confined areas for meat, dairy, and egg production, generate more than 500 million tons of manure each year (or more than three times the amount of raw waste that is generated in the U.S. annually by humans). Petitioner’s Memo at 3. CAFO waste contains numerous pollutants that threaten water quality, aquatic life, and public health, including nutrients such as nitrogen, phosphorus, and potassium, pathogens and parasites, heavy metals, and pharmaceuticals such as antibiotics and hormones. Id. at 3-4. Unlike human waste, however, livestock waste is not treated in municipal wastewater facilities or septic systems before being disposed of. Rather, it is stored untreated in manure sheds, pits, or lagoons and then spread onto land. Prior to land application, manure can escape CAFOs to reach waterways through several pathways. For example, storage units can break or become faulty, or rainwater can cause stockpiles and holding lagoons to overflow and run off into surface waters. Id. at 4-5. In addition, CAFO confinement

buildings continually ventilate pollutants onto the ground, and regular CAFO activity routinely leads to tracking of manure and other pollutants out of confinement buildings. Ditches or swales between production houses directly convey water contaminated by this manure off of the CAFO and into downstream waterways. Nutrient pollution from manure spillage harms our waterways by causing algae blooms that suffocate aquatic life and threaten human health by contaminating groundwater used as a source of drinking water. Id. at 4-5.

Animal agriculture remains the largest source of phosphorus inputs to the Chesapeake Bay. Agricultural sources are estimated to account for approximately 64% of the phosphorus that enters the Bay as a result of human activities, surpassing the amount coming from wastewater discharges or urban stormwater runoff. Id. And in Maryland, nitrogen and phosphorus loads to the Bay have actually increased. Id. at 9. Unfortunately, MDE has nonetheless decided to issue an NDPES permit that lacks the federally mandated monitoring practices designed to ensure CAFOs are operating in accordance with federal and state pollution parameters.

Plaintiffs' members live, work, and recreate in the Chesapeake Bay watershed, which is severely impacted by pollution from Maryland's CAFOs. See generally, Declarations of Kathryn Phillips and Patty Lovera. For example, Ms. Phillips, the Executive Director of ACT and a member of FWW, lives, recreates, and works on the Eastern Shore of Maryland, an area that is inundated with poultry CAFOs that are subject to the Permit. Phillips Decl. ¶¶ 1-3. Ms. Phillips has suffered direct, substantial harm from MDE's permitting action because concern over unmonitored poultry pollution has led Ms. Phillips to restrict her swimming, boating, kayaking, canoeing, bird-watching, and hiking on the Pocomoke River, the Atlantic Coastal Bays, and elsewhere in the Chesapeake watershed. Id. ¶¶ 8, 15. Ms. Phillips also suffers harm through her

diminished recreational enjoyment of her local waterways when she does use them, due to her concern about CAFO pollution when she or her friends must paddle or patrol as Coastkeeper. Id. ¶¶ 14-15, 18. MDE's failure to require basic CAFO pollution monitoring in the Permit harms Ms. Phillips by leaving citizens in the dark about whether specific CAFOs are degrading waterways and threatening the health of anyone who recreates downstream from a facility. Id. ¶ 16. It further harms Ms. Phillips by making it necessary for her to expend limited time and resources conducting water quality monitoring in an attempt to document CAFO pollution and determine for herself where it is safe for her and ACT members to boat and recreate. Id. ¶ 14. But even informed, active citizens like Ms. Phillips cannot personally monitor water quality at every CAFO, and often lack access to appropriate monitoring points at CAFOs, so she often lacks reliable data about the pollution to which she may be exposed. Id. Without monitoring data from each permitted CAFO, Ms. Phillips and others cannot make informed decisions about when to steer clear of waterways contaminated by CAFO pollution. Id. ¶ 18. Ms. Phillips clearly satisfies the injury in fact requirement of federal standing.

Ms. Patty Lovera is the Assistant Director of FWW. Lovera Decl. ¶ 2. In her role at FWW, Ms. Lovera attempts to use information and activism to keep the Bay and surrounding waters as healthy as possible. ¶¶ 5-11. Despite FWW's fundamental goal of providing its members and all Maryland citizens with up to date information about the number, size, and pollutant discharge of area CAFOs, however, the available data is "unreliable and full of gaps." Id. ¶¶ 10-13. Without adequate data, Ms. Lovera is injured because she cannot use the Chesapeake Bay and Maryland waterways recreationally and has diminished aesthetic enjoyment of them as a result of her legitimate fear of dangerous pollution. Id. ¶ 15. CAFOs increase nitrogen and phosphorous pollution, which leads to algal blooms that kill aquatic life and render

waterways unusable for fishing, swimming, recreation, or safe consumption. Id. Ms. Lovera has already been harmed by the need for her organization to expend significant resources attempting to gather the information that should be publicly available through monitoring. Id. ¶¶ 16-17. The absence of CAFO monitoring requirements in the GDP therefore causes Ms. Lovera and FWW specific, identifiable harm sufficient to show standing.

Like the plaintiffs in Friends of the Earth, see *supra* at 2-3, Petitioners' members have reasonable, behavior-altering concerns about the Permit's noncompliance with the CWA's monitoring requirements. These concerns harmfully affect Ms. Lovera, Ms. Phillips, and others' use and enjoyment of the Chesapeake Bay watershed, which is already heavily polluted by an under regulated CAFO industry.

In sum, Petitioners have standing because MDE's issuance of a permit that does not conform the requirements set forth in the CWA has caused Ms. Phillips and Ms. Lovera concrete and particularized injury.

c. Petitioners' members' injuries are traceable to Defendant MDE's decision to issue a permit not in conformance with the CWA and are likely to be redressed by a favorable opinion of this Court.

In addition to harm, standing requires "a causal connection between the injury and the conduct complained of – the injury has to be fairly . . . trace[able] to the challenged action of the defendant, and not . . . the result [of] the independent action of some third party not before the court." Defenders of Wildlife, 504 U.S. at 560 (quotation marks and citation omitted). However, standing to challenge government agency conduct does not require the agency "to be the direct actor in the injurious conduct . . . [I]ndirect causation through authorization is sufficient." America's Cmty. Bankers v. FDIC, 200 F.3d 822, 827 (D.C. Cir. 2000). Petitioners must also show "a likelihood that the requested relief will redress the alleged injury." Steel Co. v. Citizens for a Better Environment, 523 U.S. 83, 103 (1998).

Plaintiffs' members' concrete and particularized injuries are the direct result of MDE's final determination to issue a permit that does not comply with the CWA. MDE's deficient permit comes at a time when the Bay is approaching its nineteenth consecutive year on the EPA's list of "impaired" waters. And in recent years, nitrogen and phosphorus loads to the Bay from Maryland have increased. Petitioner's Memo at 9. MDE knows that Maryland CAFOs are significant sources of pollution that are subject to permit effluent limitations, yet the Agency refuses to include in the Permit monitoring provisions designed to demonstrate compliance with those limitations. This failure directly harms Petitioners' members by preventing them from having access to information about the safety of waterways and the compliance status of regulated CAFOs. This is precisely what has diminished Petitioners' members' use and enjoyment of Maryland waterways and the Chesapeake Bay, and in some cases has caused them to refrain from these activities altogether.

The Court can redress this injury to Petitioners' members' interests by compelling MDE to reissue the Permit in conformance with the law. The requested relief would require MDE to impose water quality monitoring requirements on all permitted CAFOs, which would provide the information about pollution and public safety that Petitioners' members need to make informed decisions about where and when to recreate. This relief would further enable members such as Kathy Phillips to cease expending her own resources on CAFO pollution monitoring in Maryland, and would enable ACT and FWW members to fully enjoy recreating in and around Maryland waterways and the Chesapeake Bay without concern over undisclosed and dangerous CAFO pollution.

d. Petitioners seek to protect interests that are germane to their purposes, and Petitioners' members need not participate in this lawsuit.

The interests at stake in this case are germane to the missions of both Petitioner organizations, both of which work extensively to address the CAFO industry's detrimental impacts on the Chesapeake Bay and attendant waterways.

FWW is a consumer protection non-profit organization that “works to empower people through advocating for clean, healthy and sustainable food and water systems. Part of [its] work within this mission is to ensure that our food production systems like the meat and CAFO industry operate sustainably with minimal impacts on both the community and aquatic health.” Lovera Decl. ¶¶ 4-7. ACT is also very concerned with the impact of Maryland's CAFOs on the Chesapeake Bay watershed. “ACT works to protect and enhance the natural resources of the Atlantic coastal bays watershed through advocacy, conservation, and education.” Phillips Decl. ¶ 6. ACT actively works toward a healthier Chesapeake Bay watershed and has a history of both regional and statewide advocacy. Id.

This lawsuit seeks to compel MDE to reissue its CAFO NPDES permit in conformance with the law. Both organizations also seek transparency and information to help citizens act to enforce the CWA, and the remedy requested in this lawsuit would facilitate that important role for citizens. Lovera Decl. ¶ 6; Phillips Decl. ¶ 9. Without the CWA's required monitoring provisions, MDE's permit is incapable of ensuring Maryland's CAFOs attain state and federal effluent limitations. Requiring MDE to reissue its permit in conformance with the law will help the Agency to do a better job protecting the Bay watershed and will ensure a cleaner environment, safer food and water, and foster a healthier world for Petitioners' members and the public at large. Therefore, the interests at stake in this litigation are germane to Petitioners' missions.

Neither the Petitioners' claims nor the relief requested requires the participation of Petitioners' members in this lawsuit. Wash. State Apple Adver. Comm'n, 432 U.S. at 344 (holding that individual participation in the claim was not necessary when it did not require individualized proof). "If in a proper case the association seeks a declaration, injunction, or some other form of prospective relief, it can reasonably be supposed that the remedy, if granted, will inure to the benefit of those members of the association actually injured." Id. at 343 (quotation marks and citation omitted). The relief Petitioners seek, for MDE to reissue its CAFO NPDES permit in conformance with the law, will inure to the benefit of Petitioners' members by preventing the type of injury caused by MDE's refusal to implement the mandatory monitoring provisions of the CWA necessary to properly regulate CAFO pollution. Petitioners have timely demonstrated that they meet all applicable federal and state standing requirements, and this Court should deny MDE's motion to dismiss for lack of standing. Answer at 15.

B. Petitioners Have Organizational Standing

Because MDE's failure to comply with the Clean Water Act has directly harmed Petitioners' organizational and institutional interests, Petitioner organizations also may assert their standing directly. As noted above, FWW advocates for clean, healthy and sustainable food and water systems. It seeks to ensure that the CAFO industry operate sustainably and without adverse environmental and public health impacts. Lovera Decl. ¶¶ 4-7. ACT also implements its mission to protect and enhance the natural resources of the Atlantic coastal bays watershed through advocacy, conservation, and education. Phillips Decl. ¶ 6. Without the information that would be available if the legally required monitoring had been included in the permit, Petitioners will have to obtain that information elsewhere at their own expense. Lovera Decl. ¶¶ 9-11, 16.

Here, MDE's failure to require monitoring has harmed FWW and ACT by causing them to divert their limited resources from other activities central to their organizational purpose. Id.

In addition, the absence of monitoring harms FWW and ACT's interests in providing information to the public and their members. The opportunity cost of diverting resources to respond to alleged unlawful activity is sufficient to establish the injury in fact requirement for standing purposes. Ragin v. Harry Macklowe Real Estate Co., 6 F.3d 898, 905 (2d Cir. 1993). Here, MDE's failure to comply with the Clean Water Act causes concrete and demonstrable harms to their institutional interests. Lovera ¶16. Protection of the Chesapeake and Assateague is not an abstract concern but a central focus of Petitioners' missions. MDE's failure to monitor will require Petitioners' to alter their behavior and expend resources that would not be required if MDE complied with the law.

II. The Permit's monitoring requirements are not consistent with applicable law.

A. The Permit does not comply with the Clean Water Act because it fails to require effluent monitoring to assure compliance with permit limitations.

MDE makes, in essence, three general arguments in defense of its failure to include monitoring in its General Permit. First, it argues that the CWA's effluent monitoring requirements do not apply to CAFOs because such monitoring is "infeasible" and, therefore, EPA has not required MDE to do it. Answer at 16. Second, it argues that monitoring is not required, but rather discretionary, due to EPA's rejection of monitoring requirements in the 2003 CAFO rule. Id. And third, MDE offers a host of non-monitoring Permit requirements, including CAFO implementation of Best Management Practices (BMP), site-specific Nutrient Management Plans (NMP) and the Permit's "Zero Discharge" limitation as substitutes for its lack of monitoring. Answer at 19-23. Astonishingly, MDE concludes in its Answer that these monitoring substitutes are "sufficiently protective of water quality" even though this Permit and its prior, almost identical iteration, has been in place for nearly seven years while CAFO's

remain the largest source of nutrient pollution in the Eastern Shore waterways where these facilities operate.

a. The Clean Water Act monitoring requirements apply to all NPDES permits, including CAFOs and requires that CWA-compliant permits include effluent monitoring to assure compliance with permit limits.

As explained in Petitioners' opening memo, the CWA and its implementing regulations require effluent monitoring in *every* NPDES permit issued under the CWA in order to "assure compliance with permit limitations." 40 C.F.R. § 122.44(i)(1). Despite this clear, unambiguous CWA mandate, MDE argues that the monitoring provisions do not attach to its CAFO Permit because in some cases it would simply be too difficult – or "infeasible" – for these industrial facilities to comply with monitoring requirements like other industrial point sources do. Answer at 16. However, neither the CWA nor its implementing regulations contain an exception from this clear requirement for "infeasibility."

In dismissing CAFO monitoring as infeasible and discretionary, MDE cites to EPA's prior rejection of a national CAFO monitoring requirement. Answer at 16-17. But that reliance is misplaced for three main reasons. First, EPA's rejection of a particular CAFO requirement in 2003 does not carve out an exception to its universally applicable NPDES permit monitoring requirements. 68 Fed. Reg. 7217, 7219 (Feb. 12, 2003). Second, in 2003 EPA was considering CAFO surface water monitoring as a "best available technology" requirement to reduce pollution, not as a measure to "assure compliance" with pollution limits. It rejected monitoring because it would not reduce pollution (which Petitioners do not dispute), and *not* because it was not feasible as a means to assure compliance. *Id.* Third, EPA expressly noted the possible difficulty of imposing such a requirement "*through a national rule*" in rejecting monitoring as part of its CAFO effluent guidelines (emphasis added). Answer at 16-17, citing 68 Fed. Reg. at

7219. MDE simply cannot rely on EPA's 2003 action to justify its failure to require monitoring in the GDP.

Furthermore, MDE's position is contradicted by other CAFO permits, issued by other state agencies, that require surface water monitoring and, ultimately, by other provisions contained in MDE's General Permit itself. Other state environmental agencies recognize that without monitoring provisions to demonstrate that the permitted entity is, in fact, not polluting above allowed amounts, the permit is little more than a paper exercise. For example, the CAFO NPDES Permit issued by the California Regional Water Quality Control Board, North Coast Region, contains extensive surface water monitoring requirements in Attachment E of the permit. The Attachment itself explains the inclusion of these provisions by noting that "Title 40 of the Code of Federal Regulations section 122.48 (section 122.48) requires that all NPDES permits specify monitoring and reporting requirements." CA, NCR, Permit, Attachment E – Monitoring and Reporting Program at E-4, available at http://www.waterboards.ca.gov/northcoast/water_issues/programs/dairies/pdf/120127/npdes/120127_12_0001_NPDES_CAFO.pdf. This CAFO Permit, contrary to MDE's infeasibility assertions, requires the Operator to conduct mandatory surface water sampling a minimum of three times a year. The Operator is required to take grab samples from watercourses "at the point where the watercourse leaves the property." CA, NCR, Permit, Attachment E – Monitoring and Reporting Program at E-4, available at http://www.waterboards.ca.gov/northcoast/water_issues/programs/dairies/pdf/120127/npdes/120127_12_0001_NPDES_CAFO.pdf. There is, clearly, nothing infeasible about requiring CAFO owners and operators to take water samples from the manmade ditches leaving the facility that are purposefully designed to carry polluted rainwater away during rain events.

Furthermore, the Permit itself provides that MDE “may” require a permittee to conduct the very same, “infeasible” monitoring, but only when MDE deems it necessary. MDE may require a permittee to take “grab samples of surface discharge” to “evaluate the effectiveness of the CNMP, NMP or Conservation Plan” when the agency so chooses. See Permit, Part V.A.1. The fact that MDE may, at its own discretion, require the very type of monitoring Petitioners seek on a case-by-case basis belies the Agency’s claim that such monitoring is not feasible. MDE’s discretionary approach also defeats the very purpose of the monitoring requirement for all permittees – monitoring is required to ensure that all permit holders are in compliance with their permit limits, not just those who MDE selectively chooses.

A federal court has also recently rejected a similar infeasibility defense and remanded NPDES permits for lack of monitoring requirements, despite technical monitoring challenges not present in typical NPDES permits. See Natural Resources Defense Council v. EPA, 808 F.3d 556, 583 (2015). In NRDC, the court held that EPA acted arbitrarily and capriciously in failing to require water quality-based effluent limit monitoring of ships’ ballast system discharges. In that case, EPA argued that it was “unrealistic” to have stricter monitoring of indicator bacteria because of “practical constraints on the ability to collect and analyze the volumes of ballast water necessary to ‘directly’ detect and quantify such organisms at the level of concern.” Id. The Second Circuit stated unequivocally that this was “not a valid excuse,” Id. at 584, because “an NPDES permit is unlawful if a permittee is not required to effectively monitor its permit compliance,” unless EPA has found that there are “severe technological limitations on monitoring.” Id. at 582-83. The record shows no such limitations in this case.

NRDC also demonstrates that an EPA action or failure to act is not dispositive of the legality of MDE’s Permit; merely because “EPA has not mandated that CAFOs perform

upstream, downstream, in-stream or any other such monitoring,” Answer at 17, does not mean that such monitoring is not nonetheless federally mandated. The EPA may, like MDE, be noncompliant with the CWA, but that does not render MDE’s illegal permit legal. MDE would have this Court believe that the underlying question before it is not whether its Permit complies with the CWA, but whether it meets EPA’s approval regardless of the cited CWA provisions. However, EPA is not the arbiter of whether MDE is in compliance with federal law, this Court is. After all, the Court should note that EPA also signed off on inspection provisions contained in this same General Permit that even MDE conceded were legally insufficient when it took a voluntary remand to rewrite those inspection provisions. The question before the Court is not whether EPA approves of MDE’s approach, but whether the CWA and its implementing regulations require monitoring that adequately “assures compliance” with the effluent limits contained in the NPDES permits, including the General Permit at issue in this case and whether MDE’s Permit contains those provisions. As Petitioners noted in their opening memo, the plain language of the CWA clearly requires monitoring and MDE’s Permit is devoid of *any* monitoring requirements to determine whether CAFO operators are in compliance with effluent limits. MDE does not, and cannot, point to any language in the CWA or its implementing regulations to excuse its lack of monitoring requirements simply because none exists.

b. MDE’s proffered monitoring substitutes do not “assure compliance” with the effluent limitations in the Permit and, therefore, do not satisfy the legal requirement.

MDE contends that it can ignore the federal monitoring requirements because CAFOs covered by this General Permit are authorized to operate as “zero discharge” facilities. This discharge limitation is achieved, and according to MDE assured, by monitoring surrogate

practices, including BMPs and NMPs that are designed to minimize discharges. But, for several reasons, the absence of a monitoring requirement in the General Permit cannot be excused.

First, there is nothing in the CWA that allows an exception to the monitoring requirements for a so-called “zero discharge” facility. The CWA seeks to regulate “point sources,” and defines “point sources” to include CAFOs. That is precisely why a NPDES permit is required in this situation. Federal law requires that *all* NPDES permits include surface water monitoring to assure compliance, even with “zero discharge” permit limitations. Thus, MDE’s suggestion that supposedly “zero discharge” permits need not contain compliance assures is circular and simply wrong as a matter of law.

Furthermore, MDE’s position suggests a fundamental misunderstanding of the role of monitoring with respect to measures designed to reduce pollution—i.e., technology based standards—like the BMPs that MDE envisions CAFOs will implement under the General Permit. Water quality monitoring is necessary to demonstrate that the measures are sufficient to meet the permit’s discharge limits. It is impossible for dischargers to “assure compliance” with the zero-discharge standard in the General Permit without any such monitoring.

Thus, while EPA (as authorized by 33 U.S.C. § 1311(b)(1)(A)) has promulgated a “zero discharge” effluent limitation for CAFO “production areas”¹ that prohibits any discharge of

¹ “*Production area* means that part of an AFO that includes the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment areas. The animal confinement area includes but is not limited to open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers, cowyards, barnyards, medication pens, walkers, animal walkways, and stables. The manure storage area includes but is not limited to lagoons, runoff ponds, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles, and composting piles. The raw materials storage area includes but is not limited to feed silos, silage bunkers, and bedding materials. The waste containment area includes but is not limited to settling basins, and areas within berms and diversions which separate uncontaminated storm water. Also included in the definition of

manure, litter, or process wastewater from the production area of a CAFO into the waters of the United States, except when due to extreme rainfall events, 40 C.F.R. § 412.43(a)(1); 40 C.F.R. § 412.31(a), the zero discharge limitation operates like any other discharge limit in any other NPDES permit; the only way to know whether or not in fact “zero discharge” occurs is to monitor the surface waters. Without a surface water monitoring requirement, this “zero discharge” limitation is nothing more than a blind assumption that may or may not be accurate.

The federal regulations do not simply assume that, because some technology or pollution control practice is mandated by a permit, it will work and no monitoring is needed. Many non-CAFO point sources must comply with “Best Available Technology” standards to reduce discharges by implementing up-to-date pollution control technology, similar to the BMPs required in the CAFO General Permit. *See generally*, NPDES Permit Writers’ Manual, Chapter 8 (Sept. 2010) *available at* https://www.epa.gov/sites/production/files/2015-09/documents/pwm_chapt_08.pdf. But these point sources must then demonstrate compliance with their discharge limits by also conducting regular water quality sampling to show the technologies are in fact working and keeping the facility within permit requirements. Indeed, that is the whole point of the NPDES monitoring requirements: instead of relying on the hope and promise that technology will produce compliance, monitoring helps show that the technology in fact does work so that compliance is “assured.” These requirements are equally applicable to CAFOs, and MDE provides no authority to the contrary.

What the state’s and EPA’s data suggests is that the risks from CAFO pollution are such that merely wishing and hoping that CAFOs will have zero discharge from their production areas

production area is any egg washing or egg processing facility, and any area used in the storage, handling, treatment, or disposal of mortalities” 40 C.F.R. § 122.23(b)(8).

is not enough; the zero discharge limit should be proven by effective surface water monitoring so that Maryland's waters do not get worse and in fact get better.

Indeed, of all the states in the country, Maryland might provide the best example of how un-protective a permit limit without monitoring truly is. Maryland is home to at least 588 CAFOs and Maryland animal feeding operations (MAFOs).² According to the U.S. Department of Agriculture, in 2009, Maryland farms grew 1.4 billion pounds of broilers, produced 554 million eggs, and raised 68.8 million pounds of cattle and calves and 15.3 million pounds of hogs.³ The majority of Maryland farms raise poultry on the Eastern Shore.⁴ Compared with other states, Maryland has taken a fairly proactive view on CAFO permitting, requiring CWA permits for every CAFO in the state under EPA's vacated 2008 Propose to Discharge standard. Despite this comprehensive approach to CAFO permitting, and the "zero discharge" mandate, animal manure and other agricultural sources remain the state's biggest contributor of nutrient pollution to the impaired Chesapeake Bay. In Maryland, agriculture accounts for 38% of the nitrogen loading and 52% of phosphorus loading to the Bay.⁵

MDE is suffering from a severe disconnect between its regulation of CAFOs on paper and the impact of these operations on the state's waterways in reality. The so-called "zero

² A MAFO is a large animal feeding operation that does not discharge or "propose to discharge" manure, litter, or process wastewater. *AFO (CAFO/MAFO) Webpage*, MARYLAND DEPARTMENT OF THE ENVIRONMENT (last visited September 28, 2016), <http://www.mde.state.md.us/programs/Land/RecyclingandOperationsprogram/AFO/Pages/index.aspx>.

³ Gary Kelman, *MDE, farmers gain ground in keeping nutrients from Bay waters*, MARYLAND DEPARTMENT OF THE ENVIRONMENT (June 2011), <http://www.mde.state.md/us/programs/ResearchCenter/ReportsandPublicationPages/researchcenter/publications/general/eMDE/vol4no10/Article7.aspx>.

⁴ *Maryland at a Glance: Agriculture*, Maryland State Archives Website (last visited September 28, 2016), <http://msa.maryland.gov/msa/mdmanual/01glance/html/agri.html>.

⁵ Chesapeake Bay Model, Phase 5.3.2 Model, Chesapeake Bay Foundation public comment.

discharge” standard in Maryland CAFO Permits has failed to prevent the heavy loads of pollutants these factory farms are dumping into the Bay. This legal fiction has been allowed to persist because MDE has refused to require CAFOs to demonstrate that they are in compliance with their Permits’ prohibition on discharges through sampling and monitoring. Such a failure to properly implement the CWA underscores the importance of EPA’s universally-applicable monitoring provisions. A Permit that complies with the CWA by requiring CAFOs to demonstrate to MDE and the public that they are not illegally polluting our waterways stands to significantly benefit Maryland’s rivers and streams, as well as the Chesapeake Bay.

CONCLUSION

Based upon the foregoing, Petitioners have standing in this case to challenge MDE’s final determination to issue the GDP. The Permit issued is inconsistent with the federal CWA and its implementing regulations, and it should be remanded for reissuance in compliance with all applicable regulations.

/s/ Susan J. Kraham

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September 30, 2016

PETITION OF

Food & Water Watch
1616 P Street, NW, Suite 300
Washington, DC 20036

Assateague Coastal Trust
9931 Old Ocean City Boulevard
Berlin, MD 21811

FOR JUDICIAL REVIEW OF THE
DECISION OF THE

Maryland Department of Environment
1800 Washington Boulevard
Baltimore, Maryland 21230

IN THE CASE OF

NOTICE OF FINAL DETERMINATION
General Discharge Permit for Animal Feeding
Operations
State Discharge Permit: 09AF, NPDES Permit:
MDG01

Civil Action No. C-02-CV-14-000786

DECLARATION OF KATHLYN PHILLIPS

I, Kathlyn Phillips, do hereby declare:

1. My name is Kathlyn Phillips, and I reside at 12316 West Torquay Road, Ocean City, MD, 21842. I have lived in Worcester County for over 30 years. Unless otherwise stated, I have personal knowledge of all of the facts stated below.
2. I have been the Executive Director and Assateague Coastkeeper (Coastkeeper) for the Assateague Coastal Trust (ACT) since 2007.
3. I am also a member of Food & Water Watch.

4. I make this declaration in support of Food & Water Watch's and ACT's appeal of the Maryland Department of the Environment (MDE) general permit for concentrated animal feeding operations (CAFOs) and Maryland animal feeding operations (MAFOs).

5. ACT is a nonprofit corporation organized under the laws of the State of Maryland and is a charitable corporation under section 501(c)(3) of the Internal Revenue Code. ACT maintains its offices at 9931 Old Ocean City Boulevard, Berlin, MD 21811.

6. ACT works to protect and enhance the natural resources of the Atlantic Coastal Bays watershed through advocacy, conservation, and education. In addition, ACT has a history of advocacy throughout the region. This includes advocacy focused on Maryland tributaries to the Coastal and Chesapeake Bays, such as the Pocomoke River and St. Martin River.

7. As Executive Director of ACT, I am responsible for overseeing the day-to-day operations, including managing staff, fundraising, event planning and interacting with members and the Board of Directors. As Coastkeeper, I patrol the bays, rivers, and streams in the region to monitor water quality and investigate sources of pollution. I also conduct water monitoring for ACT's Swim Guide app, which posts weekly information about the water quality in various waterways so citizens can make informed decisions about whether to swim in or otherwise come into contact with water that could contain pathogens.

8. I also personally recreate on the Atlantic Coastal Bays, on the Pocomoke River and in the adjacent parks, and elsewhere in the Chesapeake watershed. These activities include swimming, boating, kayaking, canoeing, bird-watching and hiking. I regularly swim and kayak in the Atlantic Coastal Bays and from time to time like to paddle on the Pocomoke River.

9. It is important to me, in both my personal and professional life, that I have access to records and data related to sources of pollution, because this information impacts ACT's

expenditure of my time and its resources, as well as my uses of Maryland waterways for recreation. I regularly file both state and federal freedom of information requests for information related to CAFOs and other sources of pollution, but often the information I need to fully understand the scope and impacts of CAFO pollution is not available from state and federal agencies.

10. I am aware that nutrient and pathogen pollution has impaired water quality in many Maryland rivers and streams, as well as the Chesapeake Bay. For example, I am aware that the St. Martin River has Total Maximum Daily Loads (TMDLs) for nutrients, and that the Pocomoke River has a TMDL for fecal coliform. I am also aware that the Chesapeake Bay is impaired by nutrient pollution and is now subject to a Bay-wide TMDL for nitrogen and phosphorus.

11. I am further aware that in the late 1990s, the Pocomoke River suffered crippling outbreaks of *Pfiesteria piscicida dinoflagellate* ("*Pfiesteria*"), a single-celled organism that, in toxic forms, produces a neurotoxin that kills fish and has been shown to adversely impact human health. As a result of these outbreaks, fish kills, and associated concerns about the human health impacts of *Pfiesteria*, state and local health officials closed a portion of the Pocomoke River in August of 1997. Regulators believed that the chicken operations that proliferate throughout Maryland, including along the Pocomoke River, were one of the sources of the excess nutrient pollution thought responsible for the outbreaks of *Pfiesteria* in the Pocomoke. I am aware that there are numerous CAFOs and MAFOs in the Pocomoke River watershed.

12. I believe that CAFOs are a significant source of nutrient and pathogen loads to waterways in Maryland, including the Pocomoke River, in part because they are not being regulated enough and citizens are not being provided with the information necessary to protect

their waterways and communities under laws like the Clean Water Act. The Environmental Protection Agency and state agencies have also attributed significant portions of the pollution entering the Chesapeake Bay and other impaired waterways to CAFOs and other agricultural sources.

13. I am concerned that the construction of more CAFOs in Maryland is increasing the threat of CAFO pollution to local waterways, as well as the Atlantic Coastal Bays. I have personally observed, while driving throughout Maryland and patrolling Maryland waterways, that many Maryland broiler chicken CAFOs do not have any ponds to capture polluted stormwater, or any apparent means to otherwise prevent pollution from running off of the CAFOs into ditches that discharge directly into waters like the Pocomoke River.

14. In part because there is inadequate information available about CAFOs' pollution, I have also participated in aerial and ground investigations of poultry facilities throughout Maryland on my own and with other concerned citizens and advocates. As a result of these investigations, I gathered information and shared it with federal and state officials. If MDE required all CAFOs to monitor and report their own pollution discharges, I would not have to expend so many resources monitoring water quality near CAFOs and conducting other CAFO investigations, and would be able to spend more of my and ACT's time and resources investigating other sources of pollution in the watershed.

15. My concerns about Maryland's CAFO pollution are also affecting my recreational activities. My knowledge and awareness of the various types of pollution in these waterways, including fecal coliform and nutrient pollution from poultry CAFOs, make it much less enjoyable for me when I have to paddle or patrol as Coastkeeper or when I personally recreate on rivers like the Pocomoke and or in the Coastal Bays watershed. I worry about the environmental

damage caused by these pollutants and the decline in the health of the rivers and streams in the region. I also worry about my health and the health of ACT's members. For example, I am afraid that further discharges of poultry waste to the Pocomoke River could contribute to new outbreaks of *Pfisteria*, and that such outbreaks could adversely affect my health and welfare, because recreational activities like swimming and kayaking put me in direct contact with the water. My concerns about CAFO pollution have decreased my enjoyment of boating and swimming in Pocomoke Sound, where I recreate about twice every summer with friends. I have visually observed CAFO discharges upstream of the Sound. Knowing that upstream CAFO pollution threatens the safety of swimming, fishing, and crabbing in the Sound, I will no longer swim or crab there if it has rained in the past two days, because the stormwater could carry dangerous pollutants from the upstream CAFOs into the Sound. Similarly, I will no longer stand up paddleboard, fish, or crab in the Northern Coastal Bays or their tributaries, such as the St. Martin River and Greys Creek, within 48 hours of a rainfall as a result of my concerns about unmonitored CAFO pollution. If MDE required CAFOs to monitor and report their own pollution, I would feel safer recreating in Maryland waterways and would enjoy all of these recreational activities more because I would be less concerned that the water could contain harmful, but unreported, CAFO pollution.

16. It is vitally important to my interests, both professionally as an environmental advocate and personally as someone who enjoys the use of many of the region's waterways, that MDE properly carries out its Clean Water Act duties by protecting its waters from sources of pollution. I believe that in order to protect our waterways as required by the Clean Water Act, citizens and regulators must know what impact regulated facilities are having on waterways and whether they are preventing illegal discharges of pollution. Given the fact that agriculture, and


the Maryland CAFO industry, is such a large part of the pollution problem facing waterways in Maryland, the Coastal Bays, and the Chesapeake Bay, gathering information about these facilities is critical. Given the significant impact I believe Maryland's CAFOs are having on the waterways where I live and recreate, MDE's failure to perform its duties, including requiring water pollution monitoring requirements in the Maryland General Permit, causes me harm.

17. For the same reasons, I have also challenged the Delaware Natural Resources and Environmental Control (DNREC) National Pollution Discharge Elimination System (NPDES) permit for broiler chicken CAFOs that do not land apply waste, which, as in this appeal, seeks to impose basic water pollution monitoring requirements in all CAFO permits.

18. Permits that will not require CAFOs to gather even the most basic pollution data to show whether they are discharging to waterways or complying with permit limits, as MDE is issuing under its Permit, will make it more difficult for me to protect my own health and local waterways from the harm caused by CAFOs. By refusing to require the water pollution monitoring necessary to properly hold permitted CAFOs accountable, MDE's actions serve to heighten my fear and concerns, and decrease my enjoyment of my local waterways. Public access to information about pollution, and my ability to share this information with members of ACT and other in my community, are vital to my ability to protect myself from dangerous pollution and my work to help restore the Chesapeake Bay, Atlantic Coastal Bays, and local waterways.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 29, 2016.


Kathlyn Phillips

PETITION OF

Food & Water Watch
1616 P Street, NW, Suite 300
Washington, DC 20036

Assateague Coastal Trust
9931 Old Ocean City Boulevard
Berlin, MD 21811

FOR JUDICIAL REVIEW OF THE
DECISION OF THE

Maryland Department of Environment
1800 Washington Boulevard
Baltimore, Maryland 21230

IN THE CASE OF

NOTICE OF FINAL DETERMINATION
General Discharge Permit for Animal Feeding
Operations
State Discharge Permit: 09AF, NPDES Permit:
MDG01

Civil Action No. C-02-CV-14-000786

DECLARATION OF PATTY LOVERA

I, Patty Lovera, do hereby declare:

1. I am over the age of eighteen (18) years, and suffer from no legal incapacity.
2. I am the Assistant Director of Food & Water Watch (FWW), a position I have held since the organization's founding in 2005. In my capacity as Assistant Director, I oversee and am intimately familiar with the organization's mission, membership, activities, and operations. My business address is 1616 P Street NW, Suite 300, Washington, DC 20036.

3. I make this declaration in support of FWW's appeal of the Maryland Department of the Environment (MDE) general permit for concentrated animal feeding operations (CAFOs) and Maryland animal feeding operations (MAFOs) (Permit). Unless otherwise stated, I have personal knowledge of all the facts stated below.

4. FWW is a national, non-profit, public interest advocacy organization with its headquarters in Washington, DC and several offices and organizers located across the country, including an office in Baltimore. We have more than 900,000 members and supporters, including more than 19,000 members and 80,000 supporters in Maryland.

5. One of our organization's primary purposes is to educate the public regarding food systems that guarantee safe, wholesome food produced in a humane, sustainable manner that simultaneously protects public water resources. A critical part of this mission is educating consumers about the sustainability of our food production system and working to both counter the many harms of our current system and promote cleaner, healthier and more equitable systems of food production. FWW advocates on behalf of the public for policies promoting environmental protection and the long-term well-being of communities.

6. FWW works to empower people through advocating for clean, healthy and sustainable food and water systems. Part of our work within this mission is to ensure that the CAFO industry operates with minimal impacts on both the community and aquatic health, and is held accountable for its pollution. We believe transparency and accountability are vital to all of our work, including our CAFO and food systems work. To that end, we also strive to provide citizens access to information about CAFO industry pollution.

7. FWW also believes that it is vitally important that state agencies like MDE fulfill their missions to protect our environment and communities from pollution, including CAFO

water pollution. Because of this, challenging agency actions that we believe fall short of meeting legal requirements is one of FWW's core activities and is central to our ability to further our mission. Such challenges have been an important way that FWW seeks to advance our interests and protect waterways and other resources for our members since our founding. To increase our capacity to bring such legal challenges against agencies and polluters, FWW launched Food & Water Justice, the legal branch of the organization, in 2010. We are aware that, to date, MDE has failed to properly oversee and regulate the CAFO industry, including by issuing Clean Water Act (CWA) discharge permits to CAFOs that do not meet all federal monitoring requirements, and its ongoing failure to properly regulate CAFOs harms FWW and its many members.

8. FWW filed comments on the draft Permit, requesting that MDE require all CAFOs covered by the Permit to conduct water quality monitoring to assure compliance with permit terms. FWW is aware that MDE approved the final Permit without including the requested monitoring requirements.

9. As an organization, one of our responsibilities is to provide information to our members regarding CAFOs and their pollution. To that end, we maintain a website and communications network whereby we keep our members informed about the current model of food production in the United States, including the operation of CAFOs. Access to permit and pollution data related to CAFOs is an integral part of our work.

10. FWW has designed and maintains a website dedicated specifically to informing our members and the general public about the CAFO industry. This site, located at <http://www.factoryfarmmap.org/>, contains very specific data and information regarding the CAFO industry across the country. Ongoing access to new and additional data about the CAFO industry is critical to our upkeep of this website. FWW must use aggregated U.S. Department of

Agriculture data to generate the map, due in part to the fact that other state and federal agencies have not provided other ways for the public to access site-specific CAFO data.

11. Data related to the CAFO industry is of primary importance to our organization and its members because of the many environmental and community ills associated with this unsustainable production model. CAFOs frequently create severe and ongoing pollution problems for nearby waterways. These facilities often confine too many animals in too small an area, producing too much manure to dispose of on available crop land, which results in discharges of pollutants into public waterways.

12. MDE has issued CWA permit coverage to most or all of its hundreds of CAFOs, but these permits do not require CAFOs to monitor their facilities for unauthorized pollution discharges. This has made it impossible for our organization to understand the breadth of CAFO pollution discharges into the state's waterways and the Chesapeake Bay, and subsequently to provide this information to our members.

13. Many of our members understand this failure to require CAFO monitoring, and are concerned about using waterways that may be impacted by unmeasured CAFO pollution. The consequence of this lack of monitoring data is that our members' aesthetic and recreational interests in using their local waterways are negatively impacted. Site-specific water quality monitoring is critical to filling information gaps and determining which CAFOs are polluting and which waterways are being adversely impacted.

14. Pollutants from CAFOs impact waterways across the country, because industrial agricultural operations are a significant source of nitrogen, phosphorus, bacteria, and sediment into our rivers, stream, and lakes. Many state waterways are listed as impaired for nutrients on their respective CWA 303(d) lists of impaired waters.

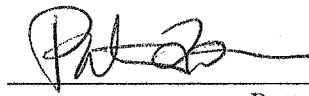
15. Increased levels of nitrogen and phosphorous from fertilizer and animal waste pollute water, which in turn leads to algal blooms. When these algal blooms occur, they can rapidly de-oxygenate an area of water. The deoxygenation results in death of aquatic life in areas referred to as dead zones. Such a dead zone forms each year in the Chesapeake Bay. The result of this pollution can render sections of a waterway unusable for fishing, swimming, recreation, or safe consumption. Many of our members rely on such waterways for recreation and drinking water.

16. Without water pollution monitoring at every permitted CAFO, FWW cannot effectively communicate with our members and the public about the state of Maryland's waterways or advocate for stronger policies and water quality protections at the state and federal level. In the absence of site-specific CAFO pollution data, FWW expends significant resources to try to obtain and provide similar information to its members. This requires staff time to create and submit public information requests, procure and review of the documents received via these requests, and research and analyze other existing information related to CAFO pollution and water quality.

17. We believe that site-specific pollution information and transparency are essential to holding Maryland polluters accountable under the CWA. A Maryland CAFO Permit that requires every CAFO to collect and report pollution discharge data, like point sources in other regulated industries, would greatly benefit our work and promote FWW's goals, objectives, and mission. Transparency would empower our members who are adversely impacted by CAFOs by enabling them to identify waterways that are vulnerable to pollution from upstream CAFOs, and to protect their health by choosing to recreate in and around cleaner, safer waterways. This information would further enable our members to identify CAFOs that are violating their permit

and demand that MDE and EPA take action to enforce the CWA. FWW would also be able to use this information to help protect our members' health and welfare by holding individual CAFOs, as well as government agencies, accountable to the CWA's requirements.

I hereby certify that the facts set forth above are true and correct to the best of my knowledge information and belief, subject to the penalty of perjury, pursuant to 28 U.S.C. § 1746.

A handwritten signature in black ink, appearing to read 'Patty Lovera', is written over a horizontal line.

Patty Lovera

Dated: September 29, 2016



☐ COURT OF APPEALS ☐ COURT OF SPECIAL APPEALS

☒ CIRCUIT COURT ☐ DISTRICT COURT OF MARYLAND FOR Anne Arundel County

City/County

Located at 8 Church Circle, Annapolis, MD 21401

Court Address

STATE OF MARYLAND

or

Case No. C-02-CV-14-000786

Food & Water Watch

Plaintiff/Petitioner

vs. Maryland Department of Environment

Defendant/Respondent

CERTIFICATE REGARDING RESTRICTED INFORMATION

(Rule 1-322.1)

I HEREBY CERTIFY that this submission: Reply Brief of Petitioner, Declaration of Kathlyn Phillips,

(Specify the documents covered by this certificate)

Declaration of Patty Lovera, and Certificate of Service

☒ does not contain any restricted information.

or

☐ contains the following restricted information: _____

which must be included because: _____

and therefore both a redacted and an unredacted version of this submission, which comply with

Rule 1-322.1 are submitted with this certificate.

9/30/2016

Date



Signature of Filer

Note: Certificate may be used to cover one or more documents having the same restricted criteria, if filed at the same time, and in the same case.

PETITION OF

Food & Water Watch
1616 P Street, NW, Suite 300
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IN THE CASE OF

NOTICE OF FINAL DETERMINATION
General Discharge Permit for Animal Feeding
Operations
State Discharge Permit: 09AF, NPDES Permit:
MDG01

IN THE CIRCUIT COURT FOR ANNE
ARUNDEL COUNTY

Civil Action No. C-02-CV-14-000786

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of September, 2016, a copy of the foregoing
Reply Brief was filed and served electronically and sent via first class mail to:

Stephanie Cobb Williams
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/s/ Russell B. Stevenson, Jr.